



General Assembly

January Session, 2009

***Amendment***

LCO No. 7946

**\*SB0087107946SD0\***

Offered by:  
SEN. MEYER, 12<sup>th</sup> Dist.

To: Subst. Senate Bill No. 871

File No. 146

Cal. No. 168

***"AN ACT INCREASING THE ENFORCEMENT AUTHORITY OF THE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION."***

1 Strike sections 1, 2 and 4 in their entirety and renumber the  
2 remaining sections and internal references accordingly

3 After the last section, add the following and renumber sections and  
4 internal references accordingly:

5 "Sec. 501. Section 22a-6b of the general statutes is repealed and the  
6 following is substituted in lieu thereof (*Effective October 1, 2009*):

7 (a) The Commissioner of Environmental Protection shall adopt  
8 regulations, in accordance with the provisions of chapter 54, to  
9 establish a schedule setting forth the amounts, or the ranges of  
10 amounts, or a method for calculating the amount of the civil penalties  
11 which may become due under this section. Such schedule or method  
12 may be amended from time to time in the same manner as for  
13 adoption provided any such regulations which become effective after  
14 July 1, 1993, shall only apply to violations which occur after said date.

15 The civil penalties established for each violation shall be of such  
16 amount as to insure immediate and continued compliance with  
17 applicable laws, regulations, orders and permits. [Such] Except as  
18 provided in subsection (c) of this section, such civil penalties shall not  
19 exceed the following amounts:

20 (1) For failure to file any registration, other than a registration for a  
21 general permit, for failure to file any plan, report or record, or any  
22 application for a permit, for failure to obtain any certification, for  
23 failure to display any registration, permit or order, or file any other  
24 information required pursuant to any provision of section 14-100b or  
25 14-164c, subdivision (3) of subsection (b) of section 15-121, section 15-  
26 171, 15-172, 15-175, 22a-5, 22a-6, 22a-7, 22a-32, 22a-39 or 22a-42a, 22a-  
27 45a, chapter 441, sections 22a-134 to 22a-134d, inclusive, subsection (b)  
28 of section 22a-134p, section 22a-171, 22a-174, 22a-175, 22a-177, 22a-178,  
29 22a-181, 22a-183, 22a-184, 22a-208, 22a-208a, 22a-209, 22a-213, 22a-220,  
30 22a-231, 22a-245a, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a,  
31 22a-354p, 22a-358, 22a-359, 22a-361, 22a-362, 22a-368, 22a-401 to 22a-  
32 405, inclusive, 22a-411, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive,  
33 22a-447, 22a-449, 22a-450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or  
34 22a-471, or any regulation, order or permit adopted or issued  
35 thereunder by the commissioner, and for other violations of similar  
36 character as set forth in such schedule or schedules, no more than one  
37 thousand dollars for said violation and in addition no more than one  
38 hundred dollars for each day during which such violation continues;

39 (2) For deposit, placement, removal, disposal, discharge or emission  
40 of any material or substance or electromagnetic radiation or the  
41 causing of, engaging in or maintaining of any condition or activity in  
42 violation of any provision of section 14-100b or 14-164c, subdivision (3)  
43 of subsection (b) of section 15-121, section 15-171, 15-172, 15-175, 22a-5,  
44 22a-6, 22a-7, 22a-32, 22a-39 or 22a-42a, 22a-45a, chapter 441, sections  
45 22a-134 to 22a-134d, inclusive, section 22a-69 or 22a-74, subsection (b)  
46 of section 22a-134p, section 22a-162, 22a-171, 22a-174, 22a-175, 22a-177,  
47 22a-178, 22a-181, 22a-183, 22a-184, 22a-190, 22a-208, 22a-208a, 22a-209,  
48 22a-213, 22a-220, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a,

49 22a-354p, 22a-358, 22a-359, 22a-361, 22a-362, 22a-368, 22a-401 to 22a-  
50 405, inclusive, 22a-411, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive,  
51 22a-447, 22a-449, 22a-450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or  
52 22a-471, or any regulation, order or permit adopted thereunder by the  
53 commissioner, and for other violations of similar character as set forth  
54 in such schedule or schedules, no more than twenty-five thousand  
55 dollars for said violation for each day during which such violation  
56 continues;

57 (3) For violation of the terms of any final order of the commissioner,  
58 except final orders under subsection [(d)] (e) of this section and  
59 emergency orders and cease and desist orders as set forth in  
60 subdivision (4) of this subsection, for violation of the terms of any  
61 permit issued by the commissioner, and for other violations of similar  
62 character as set forth in such schedule or schedules, no more than  
63 twenty-five thousand dollars for said violation for each day during  
64 which such violation continues;

65 (4) For violation of any emergency order or cease and desist order of  
66 the commissioner, and for other violations of similar character as set  
67 forth in such schedule or schedules, no more than twenty-five  
68 thousand dollars for said violation for each day during which such  
69 violation continues;

70 (5) For failure to make an immediate report required pursuant to  
71 subdivision (3) of subsection (a) of section 22a-135, or a report required  
72 by the department pursuant to subsection (b) of section 22a-135, no  
73 more than twenty-five thousand dollars per violation per day;

74 (6) For violation of any provision of the state's hazardous waste  
75 program, no more than twenty-five thousand dollars per violation per  
76 day;

77 (7) For wilful violation of any condition imposed pursuant to  
78 section 26-313 which leads to the destruction of, or harm to, any rare,  
79 threatened or endangered species, no more than ten thousand dollars  
80 per violation per day;

81 (8) For violation of any provision of sections 22a-608 to 22a-611,  
82 inclusive, no more than the amount established by Section 325 of the  
83 Emergency Planning and Community Right-To-Know Act of 1986 (42  
84 USC 11001 et seq.) for a violation of Section 302, 304 or 311 to 313,  
85 inclusive, of said act.

86 (b) In adopting regulations regarding any schedule or methods  
87 prescribed by this section, the commissioner shall consider:

88 (1) The amount or ranges of amounts of assessment necessary to  
89 insure immediate and continued compliance;

90 (2) The character and degree of impact of the violation on the  
91 natural resources of the state, especially any rare or unique natural  
92 phenomena;

93 (3) The conduct of the person incurring the civil penalty in taking all  
94 feasible steps or procedures necessary or appropriate to comply or to  
95 correct the violation;

96 (4) Any prior violations by such person of statutes, regulations,  
97 orders or permits administered, adopted or issued by the  
98 commissioner;

99 (5) The economic and financial conditions of such person;

100 (6) The economic benefit which such person derived as a result of  
101 the violation;

102 (7) The character and degree of injury to, or interference with, public  
103 health, safety or welfare which is caused or threatened to be caused by  
104 such violation;

105 (8) The character and degree of injury or impairment to, or  
106 interference with, reasonable use of property which is caused or  
107 threatened to be caused by such violation;

108 (9) The character and degree of injury or impairment to, or

109 interference with, the public trust in the air, water, land and other  
110 natural resources of the state;

111 (10) To the extent consistent with applicable law, any other factors  
112 the commissioner deems appropriate, including voluntary measures  
113 taken by such person to prevent pollution or enhance or preserve  
114 natural resources;

115 (11) In the case of violation of the provisions of subdivision (3) of  
116 subsection (a) of section 22a-135, the apparent seriousness of the  
117 release, occurrence, incident or other circumstance at the time it first  
118 became known to the licensee or any employee of such licensee, the  
119 extent of the delay from the time such licensee or employee had or in  
120 the exercise of reasonable care should have had knowledge of such  
121 release, occurrence, incident or circumstance until its reporting by the  
122 licensee in accordance with this subsection, subsection (a) of this  
123 section and sections 16-19g and 22a-135, and the conduct of the  
124 licensee in taking all necessary steps to prevent future violations of the  
125 provisions of said subdivision.

126 (c) The commissioner may issue an order pursuant to chapter 446c,  
127 446d or 446k to impose a civil penalty not delineated in the regulations  
128 adopted pursuant to this section, provided such penalty does not  
129 exceed (1) a total of one hundred thousand dollars, and (2) the per day  
130 violation limits set forth in subdivisions (1) to (8), inclusive, of  
131 subsection (a) of this section. To determine the amount of such penalty,  
132 the commissioner shall consider the factors specified in subsection (b)  
133 of this section. The commissioner shall issue any such order in  
134 accordance with the procedures set forth in this section. Any self-  
135 reported information submitted in accordance with a permit or order  
136 issued, or regulation adopted pursuant to chapters 446c, 446d or 446k  
137 shall be presumed to be factual. Any person receiving an order  
138 pursuant to this subsection who requests a hearing in accordance with  
139 subsection (e) of this section may also file with the commissioner a  
140 written request for mediation. The commissioner shall grant any such  
141 request for mediation provided such request is submitted along with a

142 timely request for a hearing. The cost of such mediation shall be  
143 assumed by the party requesting mediation. The provisions of this  
144 subsection shall not be construed to limit the commissioner's authority  
145 to conduct a hearing pursuant to this subsection as the commissioner  
146 deems appropriate. For the purposes of this subsection, "mediation"  
147 means the process where the parties to a hearing meet with a mutually  
148 selected impartial mediator to work toward resolution of the issues  
149 that are the subject of the request for a hearing in accordance with  
150 generally accepted principles of mediation."

151 [(c)] (d) If the commissioner has reason to believe that a violation  
152 has occurred for which a civil penalty is authorized by this section, he  
153 may send to the violator, by certified mail, return receipt requested, or  
154 personal service, a notice which shall include:

155 (1) A reference to the sections of the statute, regulation, order or  
156 permit involved;

157 (2) A short and plain statement of the matters asserted or charged;

158 (3) A statement of the amount of the civil penalty or penalties or the  
159 method for calculating the penalty or penalties to be imposed upon  
160 finding after hearing that a violation has occurred or upon a default;  
161 and

162 (4) A statement of the party's right to a hearing.

163 [(d)] (e) The person to whom the notice is addressed shall have  
164 thirty days from the date of receipt of the notice in which to deliver to  
165 the commissioner written application for a hearing. If a hearing is  
166 requested then, after a hearing and upon a finding that a violation has  
167 occurred, the commissioner may issue a final order assessing a civil  
168 penalty under this section which is not greater than the penalty stated  
169 in the notice. The commissioner may amend a notice of assessment at  
170 any time before such notice becomes final, provided the person to  
171 whom the notice is addressed shall have thirty days from the date of  
172 receipt of such amendment in which to deliver to the commissioner a

173 written application for a hearing on such amendment, and provided  
174 further the commissioner may amend a notice of assessment after a  
175 hearing has begun only with the permission of the hearing officer. If  
176 such a hearing is not so requested, or if such a request is later  
177 withdrawn, then the notice shall, on the first day after the expiration of  
178 such twenty-day period or on the first day after the withdrawal of such  
179 request for hearing, whichever is later, become a final order of the  
180 commissioner and the matters asserted or charged in the notice shall  
181 be deemed admitted unless modified by consent order, which shall be  
182 a final order. Any civil penalty may be mitigated by the commissioner  
183 upon such terms and conditions as the commissioner in the  
184 commissioner's discretion deems proper or necessary upon  
185 consideration of the factors set forth in subsection (b) of this section.

186     ~~[(e)]~~ (f) All hearings under this section shall be conducted pursuant  
187 to sections 4-176e to 4-184, inclusive. The final order of the  
188 commissioner assessing a civil penalty shall be subject to appeal as set  
189 forth in section 4-183, except that any such appeal shall be taken to the  
190 superior court for the judicial district of New Britain and shall have  
191 precedence in the order of trial as provided in section 52-191. Such  
192 final order shall not be subject to appeal under any other provision of  
193 the general statutes. No challenge to any notice of assessment or final  
194 order of the commissioner assessing a civil penalty shall be allowed as  
195 to any issue which could have been raised by an appeal of an earlier  
196 order, notice, permit, denial or other final decision by the  
197 commissioner. Any civil penalty authorized by this section shall  
198 become due and payable (1) at the time of receipt of a final order in the  
199 case of a civil penalty assessed in such order after a hearing, (2) on the  
200 first day after the expiration of the period in which a hearing may be  
201 requested if no hearing is requested, or (3) on the first day after any  
202 withdrawal of a request for hearing.

203     ~~[(f)]~~ (g) Any person acting within the terms and conditions of a final  
204 order or permit issued to him by the commissioner shall not be subject  
205 to a civil penalty, under this section, for such actions.

206       [(g)] (h) A civil penalty assessed in a final order of the commissioner  
207 under this section may be enforced in the same manner as a judgment  
208 of the Superior Court. Such final order shall be served in person or by  
209 certified mail, return receipt requested. Any notice of violation or final  
210 order against a private corporation shall be served upon at least one of  
211 the individuals enumerated in section 52-57. After entry, a transcript of  
212 such final order may be filed by the commissioner, without requiring  
213 the payment of costs as a condition precedent to such filing, in the  
214 office of the clerk of the superior court in any one or more of the  
215 following judicial districts: Any judicial district in which the  
216 respondent resides, any judicial district in which the respondent has a  
217 place of business, any judicial district in which the respondent owns  
218 real property and any judicial district in which any real property  
219 which is a subject of the proceedings is located; or, if the respondent is  
220 not a resident of the state of Connecticut, in the judicial district of  
221 Hartford. Upon such filing, such clerk or clerks shall docket such order  
222 in the same manner and with the same effect as a judgment entered in  
223 the superior court within the judicial district. Upon such docketing,  
224 such order may be enforced as a judgment of such court.

225       [(h)] (i) The provisions of this section, sections 22a-2, 22a-6, 22a-6a,  
226 22a-7, sections 22a-428, subsection (d) of section 22a-430, sections 22a-  
227 431, 22a-432, 22a-433, 22a-437 and subsections (b) and (c) of section  
228 22a-459 are in addition to and in no way derogate from any other  
229 enforcement provisions contained in any statute administered by the  
230 commissioner. The powers, duties and remedies provided in such  
231 other statutes, and the existence of or exercise of any powers, duties or  
232 remedies hereunder or thereunder shall not prevent the commissioner  
233 from exercising any other powers, duties or remedies provided herein,  
234 therein, at law or in equity.

235       [(i)] (j) No penalty shall be assessed pursuant to this section which  
236 exceeds two hundred thousand dollars or such other amount as may  
237 be provided by federal law.

238       Sec. 502. Subsection (b) of section 22a-6e of the general statutes is

239 repealed and the following is substituted in lieu thereof (*Effective*  
240 *October 1, 2009*):

241 (b) The commissioner, or [his] a designee, shall render a final  
242 decision to assess the administrative civil penalties established  
243 pursuant to this section, and shall collect such penalties, in accordance  
244 with the procedures specified in subsections (c) to [(g)] (h), inclusive,  
245 of section 22a-6b, as amended by this act. The commissioner may  
246 amend a notice of assessment at any time before such notice becomes  
247 final, provided the person to whom the notice is addressed shall have  
248 thirty days from the date of receipt of such amendment in which to  
249 deliver to the commissioner a written application for a hearing on such  
250 amendment, and provided further the commissioner may amend a  
251 notice of assessment after a hearing has begun only with the  
252 permission of the hearing officer. No challenge to any notice of civil  
253 penalty assessment shall be allowed as to any issue which could have  
254 been raised by an appeal of an earlier order, notice permit, denial or  
255 other final decision by the commissioner.

256 Sec. 503. Section 22a-75 of the general statutes is repealed and the  
257 following is substituted in lieu thereof (*Effective October 1, 2009*):

258 The commissioner may set schedules and assess civil penalties for  
259 any violation of this chapter pursuant to sections 22a-6a and 22a-6b, as  
260 amended by this act. Notice, hearing and appeal procedures shall be  
261 made pursuant to subsections [(c) to (h)] (d) to (i), inclusive, of section  
262 22a-6b, as amended by this act.

263 Sec. 504. Section 51-344b of the general statutes is repealed and the  
264 following is substituted in lieu thereof (*Effective October 1, 2009*):

265 Whenever the term "judicial district of Hartford" is used or referred  
266 to in the following sections of the general statutes, the term "judicial  
267 district of New Britain" shall be substituted in lieu thereof: Subsection  
268 (b) of section 3-70a, sections 3-71a and 4-164, subsection (c) of section 4-  
269 183, subdivision (4) of subsection (g) of section 10-153e, subparagraph  
270 (C) of subdivision (4) of subsection (e) of section 10a-109n, sections 12-

271 3a, 12-89, 12-103, 12-208, 12-237, 12-242hh, 12-242ii, 12-242kk, 12-268l,  
272 12-307, 12-312, 12-330m, 12-405k, 12-422, 12-448, 12-454, 12-463, 12-489,  
273 12-522, 12-554, 12-586g and 12-597, subsection (b) of section 12-638i,  
274 sections 12-730, 14-57, 14-66, 14-195, 14-324, 14-331 and 19a-85,  
275 subsection (f) of section 19a-332e, subsection (d) of section 19a-653,  
276 sections 20-156, 20-247, 20-307, 20-373, 20-583 and 21a-55, subsection  
277 (e) of section 22-7, sections 22-320d and 22-386, subsection [(e)] (f) of  
278 section 22a-6b, as amended by this act, section 22a-30, subsection (a) of  
279 section 22a-34, subsection (b) of section 22a-34, section 22a-182a,  
280 subsection (f) of section 22a-225, sections 22a-227, 22a-344, 22a-374,  
281 22a-408 and 22a-449g, subsection (f) of section 25-32e, section 29-158,  
282 subsection (f) of section 29-161z, sections 36b-30 and 36b-76, subsection  
283 (f) of section 38a-41, section 38a-52, subsection (c) of section 38a-150,  
284 sections 38a-185, 38a-209 and 38a-225, subdivision (3) of section 38a-  
285 226b, sections 38a-241, 38a-337 and 38a-657, subsection (c) of section  
286 38a-774, section 38a-776, subsection (c) of section 38a-817 and section  
287 38a-994."